

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHN BROWN,

Plaintiff,

v.

TAKEUCHI MFG. CO. (U.S.), LTD., et
al.,

Defendants.

No. 2:21-CV-0392-JAM-DMC

ORDER

Plaintiff, who is proceeding with retained counsel, brings this civil action. Pending before the Court is Defendant Takeuchi Mfg. Co. (U.S.), Ltd.'s motion to compel Plaintiff's attendance at his deposition, ECF No. 109. Plaintiff has filed an opposition, ECF No. 114, and Defendant has filed a reply, ECF No. 116. The parties appeared before the undersigned in Sacramento, California, for a hearing on Defendant's motion. After considering the moving, opposing, and reply papers, as well as arguments and representations made by counsel at the hearing, the Court made certain orders from the bench which were memorialized in a formal order issued on September 19, 2023. Based on the subsequent procedural history reflected on the docket, the Court will hereby resolve the pending motion at ECF No. 109.

///

///

1 The motion concerns Plaintiff's failure to appear for several noticed depositions.
2 In the briefs and at the hearing, counsel represented that they have agreed that Plaintiff will
3 appear for his deposition on September 20, 2023, in Davis, California, as currently noticed. At
4 the hearing and in the Court's September 19, 2023, order, the expressed its expectation that
5 Plaintiff would appear the next day as properly noticed, and the Court so ordered. The Court
6 further stated that it would receive declarations concerning the imposition of sanctions, including
7 terminating sanctions, should Plaintiff fail to appear. As of the date of issuance of this order, no
8 such declarations have been received.¹ Given the lack of declarations or further motions related
9 to Plaintiff's attendance at his deposition, the Court will presume that Plaintiff did in fact appear
10 at his deposition and will deny Defendant's motion to compel as moot.

11 Accordingly, IT IS HEREBY ORDERED that Defendant's motion to compel
12 Plaintiff's attendance at his deposition, ECF No. 109, is DENIED as moot.

13
14 Dated: January 9, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27 ¹ The next filing after the Court's September 19, 2023, order is Defendant's motion to compel
28 further responses to written discovery, filed on December 6, 2023. This motion makes no reference to a failure of
Plaintiff to appear at his deposition.